

21 C.J.S. Courts § 107

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Courts

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III. Creation and Constitution; Officers of Courts

A. Creation, Organization, and Abolition of Courts

1. In General

§ 107. Constitutional and legislative power

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  41, 42(1), 42(2)

Unless such power is conferred on it by the constitution, the legislature has no power to confer or withdraw jurisdiction or judicial power, and a court's jurisdiction is regulated by the constitution or by statutes enacted pursuant to it.

Unless the power is conferred on it by the constitution, the legislature has no power to confer or withdraw jurisdiction or judicial power,¹ or to create or abolish courts.² However, there is authority holding that the legislature has such power unless inhibited by the constitution.³

The jurisdiction of a tribunal is regulated by the constitution or by statutes enacted pursuant to it.⁴ The legislature, however, may not give to courts a jurisdiction beyond that conferred or authorized by the constitution.⁵

In accordance with the foregoing, no tribunal with the attributes of a court, other than those named in a state constitution, can ordinarily be established without an act of the legislature.⁶

Penal tribunals.

Exigency alone will not justify the establishment and use of penal tribunals not contemplated by the Federal Constitution unless some part of that document authorizes a response to the felt need.⁷

The purpose of the code governing the courts, judicial officers, and proceedings in civil cases is to define norms of conduct and practice appropriate to persons serving in the positions covered by the code and thereby to contribute to the preservation of public confidence in the integrity, impartiality, and independence of the courts.⁸ Merely because there are no justiciability limitations on the exercise of judicial power in public actions or cases involving matters of public interest does not mean that the reference to "judicial power" in the state constitution is an empty vessel to be filled as it pleases the legislature, inasmuch as separation of powers principles make clear that there are limits to what constitutes the "judicial power" that courts may exercise.⁹

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Footnotes

- 1 Ill.—*People ex rel. Swanson v. Fisher*, 340 Ill. 250, 172 N.E. 722 (1930).

Mich.—*Okrie v. State of Mich.*, 306 Mich. App. 445, 857 N.W.2d 254 (2014).

Ohio—*State v. Noling*, 136 Ohio St. 3d 163, 2013-Ohio-1764, 992 N.E.2d 1095 (2013).

Wis.—*John F. Jelke Co. v. Hill*, 208 Wis. 650, 242 N.W. 576 (1932).
- 2 Ind.—*State v. Monfort*, 723 N.E.2d 407 (Ind. 2000).
- 3 Fla.—*State v. Branning*, 85 Fla. 61, 95 So. 237 (1923).
- 4 Ill.—*Fredman Bros. Furniture Co., Inc. v. Department of Revenue*, 109 Ill. 2d 202, 93 Ill. Dec. 360, 486 N.E.2d 893 (1985).

S.D.—*Application of Koch Exploration Co.*, 387 N.W.2d 530 (S.D. 1986).

Court of appeals
Ariz.—*State ex rel. Hance v. Arizona Bd. of Pardons and Paroles*, 178 Ariz. 591, 875 P.2d 824 (Ct. App. Div. 1 1993).

Municipality devoid of authority
A city has no authority to limit jurisdiction of the state's courts, which obtain their jurisdiction from the state constitution and statutes.

Ariz.—*Tempe Life Care Village, Inc. v. City of Tempe*, 148 Ariz. 264, 714 P.2d 434 (Ct. App. Div. 1 1985).

As to power of municipalities to create and regulate jurisdiction of courts, see § 115.
- 5 Cal.—*Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.*, 24 Cal. 3d 335, 156 Cal. Rptr. 1, 595 P.2d 579 (1979).
- 6 Ohio—*Coyne v. State*, 22 Ohio App. 462, 4 Ohio L. Abs. 483, 153 N.E. 876 (8th Dist. Cuyahoga County 1926).

Creation by court impermissible
Ind.—*Lake County Council v. Arredondo*, 266 Ind. 318, 363 N.E.2d 218 (1977).
- 7 U.S.—*Hamdan v. Rumsfeld*, 548 U.S. 557, 126 S. Ct. 2749, 165 L. Ed. 2d 723 (2006).
- 8 Mass.—*Retirement Bd. of Somerville v. Buonomo*, 467 Mass. 662, 6 N.E.3d 1069 (2014).
- 9 Or.—*Couey v. Atkins*, 357 Or. 460, 355 P.3d 866 (2015).

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